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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF CANCELLATION
OF A CEASE AND DESIST ORDER
ISSUED BY THE DEPARTMENT OF
ECOLOGY TO JOHN A. and ESTER
NELSON,

LLOYD P. and MARGARET C. FULLER,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY, and
JOHN A. and ESTER NELSON,

Respondents.

PCHB No. 83-53

ORDER GRANTING SUMMARY
JUDGMENT ON GROUNDS OF
NO JURISDICTION

13 On June 16, 1983, respondents John A. and Ester Nelson filed their
14 "Motion for Summary Dismissal of Appellants' Claim" in this matter.
15 Respondent Department of Ecology joined in support of this motion.
16 The motion was opposed by appellants Lloyd P. and Margaret C. Fuller.

17 Having heard the oral argument of counsel for all parties on
18 July 13, 1983, at Lacey, Washington, having read the written

1 memorandum filed by each party together with the records and files
2 herein, and being fully advised, the Board rules as follows:

3 1. In the prior, companion case to this one, Nelson v. DOE and
4 Fuller, PCBB No. 79-32, we reviewed our jurisdiction to hear appeals
5 from shorelines regulatory orders of the Department of Ecology (DOE).
6 We concluded that the Pollution Control Hearings Board lacks
7 jurisdiction to hear such appeals. That decision is attached and
8 incorporated herein by this reference.

9 2. There is no genuine issue of material fact in this matter.

10 3. There is no legally significant distinction between the facts
11 of the prior case (PCBB No. 79-32), which involved a shoreline
12 regulatory order staying construction, and this case which involves a
13 shoreline regulatory order cancelling the first order. We conclude
14 that the Board lacks jurisdiction to hear this matter and enter the
15 following:

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27 ORDER GRANTING
28 DENYING JUDGMENT
29 PCBB No. 83-53

ORDER

Respondent's Motion for Summary Judgment is granted and this matter is dismissed for lack of jurisdiction.

DONE at Lacey, Washington, this 1st day of August, 1983.

POLLUTION CONTROL HEARINGS BOARD

Gayle Rothrock
GAYLE ROTHROCK, Chairman

David Akana
DAVID AKANA, Lawyer Member

Lawrence J. Paulk
LAWRENCE J. PAULK, Member